

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 6596 of 2002
For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgment?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

DHIRAJ GANDARPSINH TOMAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for the Petitioner.

MR MR PRAJAPATI for the Petitioner.

Mr.M.K. Patel, Assistant GOVERNMENT PLEADER.

for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 05/02/2003

ORAL JUDGEMENT

The petitioner has challenged the detention order dated 14.6.2002. The petitioner is detained under PASA as a 'Bootlegger'. One case is filed against him. It is not in dispute that the petitioner is in judicial custody in connection with the said offence. Mr.Prajapati, learned Advocate for the petitioner, submitted that the point in question is squarely covered by the decision of the Apex Court reported in Amritlal & Others v. Union Government and others, AIR 2000 SC 3675. The detaining

authority has not addressed itself as to why he should be detained by way of preventive detention, even though he is in judicial custody. Even, there is no reference in this connection in the detention order.

Learned Advocate for the petitioner has relied on the decision of the Apex Court in *Amritlal & Others v. Union Government and others*, AIR 2000 SC 3675 (supra). In paragraphs 4, 6 and 7, the Apex Court has observed as under :-

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4. In Augustin's decision (1994 Supp (1) SCC 597) (supra) this Court also placed strong reliance on an earlier but oft-cited decision of this Court in *Binod Singh v. District Magistrate, Dhanbad*, (1986) 4 SCC 416 : (AIR 1986 SC 2090 : 1986 Cri LJ 1959) wherein it was held that if a person is in custody and there is no imminent possibility of his being released therefrom, the power of detention should not ordinarily be exercised. This Court held that there must be cogent materials before the officer passing the detention order that the detenu is likely to be released on bail. The inference must be drawn from the available material on record and must not be the ipse dixit of the officer passing the order of detention. It is in this perspective as above, that the recording of the concerned officer in the matter under reference ought to be noticed and the same reads as below:-

"Even though prosecution proceedings under Narcotic Drugs and Psychotropic Substances Act, 1985 have been initiated against Shri Amritlal I am satisfied that there is compelling necessity in view of the likelihood of his moving an application for bail and in the event of his being granted bail, the likelihood of his indulging in illicit traffic in narcotic drugs as is evident from the trend of his activities, to detain him under the Prevention of

Illicit Traffic in Narcotic Drugs
and Psychotropic Substances Act,
1988."

xxx xxx xxx

6. The requirement as noticed above in Binod Singh's case (AIR 1986 SC 2090 : 1986 Cri LJ 1959) (supra) that there is 'likelihood of the petitioners being released on bail' that however is not available in the reasonings as provided by the concerned officer. The reasoning available is the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail.' This reasoning, in our view, is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining a bail order.

... .."

In view of the above, the order of detention is required to be quashed and set aside as the authority has not properly considered as to why the petitioner is required to be detained by way of preventive detention.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

5th February, 2003 (P.B. Majmudar, J.)

(apj)